

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMIL S. CARTER, # 432110,

Petitioner,

v.

Case No. 18-13034

THOMAS WINN,

Respondent.

**ORDER CONSTRUING THE FILING OF AN AMENDED PETITION AS
A MOTION TO REOPEN CASE, DENYING MOTION TO REOPEN,
AND DENYING AS MOOT PETITIONER'S PENDING MOTIONS**

In 2018, Michigan prisoner Jamil S. Carter filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his convictions for second-degree murder and possession of a firearm during the commission of a felony, second offense. He also filed a motion to hold the petition in abeyance while he exhausted his habeas claims in state court. (ECF No. 4.) On November 19, 2018, the court denied the motion and dismissed the petition without prejudice. (ECF No. 7.) Petitioner now files an amended petition, a motion for appointment of counsel, and a motion for an evidentiary hearing. For the reasons explained below, the court declines to reopen this proceeding and will deny the pending motions.

When he first filed the habeas petition, Petitioner had not yet exhausted all of his habeas claims in state court and requested that the court hold his petition in abeyance pending exhaustion. (ECF No. 1, PageID.5.) The court found a stay unwarranted because Petitioner had ample time (nine months of the one-year limitations period) to

file a new petition in federal court after returning to state court and exhausting his claims. See *Rhines v. Weber*, 544 U.S. 269, 276–78 (2005). The court dismissed the petition without prejudice.

Petitioner fully exhausted state court remedies on December 4, 2018, when the Michigan Supreme Court denied his application for leave to appeal. See *People v. Carter*, 920 N.W.2d 117 (Mich. Dec. 4, 2018). Petitioner then filed an amended petition in this case (ECF No. 8), which the court construes as a motion to reopen this proceeding.

Shortly after filing an amended petition in this case, Petitioner filed a new habeas corpus petition, which is assigned to the Honorable Avern Cohn. See *Carter v. Winn*, No. 19-11041 (E.D. Mich. Apr. 10, 2019). The petition assigned to Judge Cohn is currently pending and challenges the same convictions Petitioner addressed in this case. Petitioner may not simultaneously challenge the same convictions in two separate habeas proceedings. Accordingly, the court will deny the motion to reopen on that basis. The court notes that Petitioner's motion could also be denied because he failed to satisfy the threshold requirements for a stay. If the court granted Petitioner's request to reopen the proceeding, Petitioner would receive the benefit of a stay, effectively allowing him to circumvent *Rhines's* strict stay restrictions.

Because the court will not reopen the case, Petitioner's remaining motions will be denied as moot. Accordingly,

IT IS ORDERED that Petitioner's amended petition (ECF No. 8) is CONSTRUED as a motion to reopen and is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Appointment of Counsel (ECF No. 10) and Motion for Evidentiary Hearing (ECF No. 11) are DENIED AS MOOT.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: September 16, 2019

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 16, 2019, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(810) 292-6522

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